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Attorneys for Defendant
Google Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC., Associational
Plaintiff, BETTY MILES, JOSEPH
GOULDEN, and JIM BOUTON, on behalf of
themselves and all other similarly situated,

Plaintiffs,

v.

GOOGLE INC.,

Defendant.

Civil Action No. 05 CV 8136 (DC)

**DECLARATION OF JOSEPH C. GRATZ IN OPPOSITION TO PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT**

I, Joseph C. Gratz, hereby declare under penalty of perjury:

1. I am an attorney duly admitted to practice law in the State of California and in this Court. I am a member of Durie Tangri LLP, attorneys for Defendant Google Inc. in the above-captioned civil action. I submit this declaration in opposition to Plaintiffs' Motion for Partial Summary Judgment. I make this declaration based on personal knowledge of the facts and circumstances set forth herein.

2. Each of the web page captures attached hereto was captured on August 19, 2013.

3. Attached hereto as Exhibit 1 is a true and correct copy of a portion of the web page resulting for a search on the Library of Congress catalog at <http://catalog.loc.gov> for the query "500 Pearl Street."

4. Attached hereto as Exhibit 2 is a true and correct copy of a portion of the web page resulting for a search on <https://books.google.com> for the query "500 Pearl Street."

5. Attached hereto as Exhibit 3 is a true and correct copy of a portion of the web page that results from clicking on the result *Alas! What Brought Thee Hither?: The Chinese in New York, 1800-1950* in Exhibit 2. This book is in the Google Books Partner Program, and Google displays full pages at the request of its publisher, Fairleigh Dickinson University Press. Because it is in the Partner Program, more than "snippets" of text are displayed.

6. Attached hereto as Exhibit 4 is a true and correct copy of a portion of the web page resulting for a search on <https://books.google.com> for the query "Hong Kee Kang."

7. Attached hereto as Exhibit 5 is a true and correct copy of a portion of the web page that results from clicking on the result *Chinese America, History and Perspectives* in Exhibit 4.

8. Attached hereto as Exhibit 6 is a true and correct copy of the web page located at

<http://www.amazon.com/gp/offer-listing/B002H9DITW/>, which offers for sale used copies of the book appearing in Exhibit 5.

9. Attached hereto as Exhibit 7 is a true and correct copy of Marc Egnal, *Evolution of the Novel in the United States: The Statistical Evidence*, 37:2 SOC. SCI. HIST. 231 (2013).

10. Attached hereto as Exhibit 8 is a true and correct copy of Jean M. Twenge et al., *Changes in Pronoun Use in American Books and the Rise of Individualism, 1960-2008*, 44 J. CROSS-CULTURAL PSYCH. 406 (2013).

11. Attached hereto as Exhibit 8 is a true and correct copy of the written testimony submitted by Paul Aiken to the Committee on the Judiciary of the United States House of Representatives in connection with a September 10, 2009 hearing titled "Competition and Commerce in Digital Books". It is available at <http://judiciary.house.gov/hearings/pdf/aiken090910.pdf>.

12. Attached as Exhibit 9 is a true and correct copy of excerpted pages of the transcript of the deposition of Paul Aiken taken herein on April 19, 2012.

13. Attached as Exhibit 10 is a true and correct copy of excerpted pages of the transcript of the deposition of Betty Miles taken herein on January 4, 2012.

14. Attached as Exhibit 11 is a true and correct copy of excerpted pages of Plaintiffs' Responses and Objections to Defendant Google Inc.'s First Set of Interrogatories to Plaintiffs The Authors Guild, Inc., Jim Bouton, Joseph Goulden and Betty Miles herein, served on April 27, 2012.

15. Attached as Exhibit 12 is a true and correct copy of excerpted pages of the transcript of the deposition of Jim Bouton taken herein on December 15, 2011.

16. Attached as Exhibit 13 is a true and correct copy of excerpted pages of the

transcript of the deposition of Joseph Goulden taken herein on January 6, 2012.

17. Attached as Exhibit 14 is a true and correct copy of Exhibit 6 to the deposition of Paul Aiken taken herein on April 19, 2012.

18. Attached as Exhibit 15 is a true and correct copy of the transcript of the deposition of Daniel Gervais taken herein on June 12, 2012.

19. Attached as Exhibit 16 is a true and correct copy of the transcript of the deposition of Benjamin G. Edelman taken herein on June 14, 2012.

20. Attached as Exhibit 17 is a true and correct copy of Exhibit 5 to the deposition of Jim Bouton taken herein on December 15, 2011.

21. Attached as Exhibit 18 is a true and correct copy of Exhibit 2 to the deposition of Betty Miles taken herein on January 4, 2012.

22. Attached as Exhibit 19 is a true and correct copy of Exhibit 16 to the deposition of Benjamin G. Edelman taken herein on June 14, 2012.

23. Attached as Exhibit 20 is a true and correct copy of excerpted pages of the transcript of the deposition of Judith A. Chevalier taken herein on June 8, 2012.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 26th day of August, 2013, at San Francisco, California.

/s/ Joseph C. Gratz
Joseph C. Gratz